



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: ORI, Inc.  
File: B-231167  
Date: August 30, 1988

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### DIGEST

1. A protest that the contracting agency did not properly evaluate technical proposals according to the solicitation's stated evaluation scheme is denied, where the record shows that the evaluators conducted a detailed evaluation of proposals in each of the technical evaluation factors listed in the request for proposals (RFP) and each factor was weighted to give it the appropriate degree of importance accorded it in the RFP.

2. A contracting agency properly decided to award a cost-plus-fixed-fee contract to the offeror of the higher-rated, higher-cost proposal, where the solicitation emphasized that technical factors were more important than cost considerations, and the contracting officer reasonably determined that the awardee's higher technical merit was worth the relatively slight additional cost.

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### DECISION

ORI, Inc., protests award of a 3-year, cost-plus-fixed-fee contract to Syscon Corp. by the Department of the Navy pursuant to request for proposals (RFP) No. N66604-87-R-5061. The RFP requested proposals to provide technical and engineering services on an indefinite delivery, indefinite quantity basis to enhance the capabilities of and to contribute to the maintenance of the Navy's test and measurement systems. ORI contends that it should have been selected for award because its proposed cost was lower than Syscon's and its technical proposal was equal to or better than Syscon's. Alternatively, ORI charges, the Navy improperly selected Syscon for award on the basis of factors not stated in the RFP's evaluation formula.

We deny the protest.

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The RFP was issued by the Naval Underwater Systems Center (NUSC) on March 3, 1987. The solicitation stated that the contract would be awarded to the offeror whose conforming proposal was determined to be most advantageous to the government, price and other factors considered. The evaluation factors, in descending order of importance, were: personnel, technical approach, management approach, corporate experience, facilities, and cost. Although cost was the least important factor, the RFP stated that the importance of cost would increase with the degree of equality of proposals in relation to the other factors, or if an offer was so high in cost as to diminish the value of the proposal's technical superiority to the government. Cost was to be adjusted for realism.

NUSC received three proposals by the April 9, 1987 closing date.<sup>1/</sup> After evaluation by a technical evaluation panel, ORI's initial technical proposal was rated overall as superior and Syscon's was rated overall as acceptable. The contracting officer reviewed the technical evaluation panel's findings and decided that ORI's proposal had been rated too high, because the evaluators considered favorably the experience and expertise of a subcontractor--A.D. Little--in evaluating ORI's proposal. In the contracting officer's opinion, the evaluators should have rated the ORI proposal lower because the role of this subcontractor was not well defined in the technical proposal and because no costs were included in ORI's cost proposal for A.D. Little personnel.<sup>2/</sup> After consulting with the chairman of the technical evaluation panel, the contracting officer lowered ORI's overall rating to highly acceptable. The contracting officer determined that all proposals were in the competitive range as each had a reasonable chance of being selected for award.

Discussions were held with all offerors in early 1988 (it is not clear from the record why it took from April of 1987 until then to initiate negotiations), and best and final

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<sup>1/</sup> For the purpose of resolving the protest we will only discuss the offers of ORI and Syscon even though the third offeror did participate throughout and did submit a best and final offer.

<sup>2/</sup> The technical evaluation panel members evaluated the proposals without the benefit of seeing the offerors' cost proposals.

offers (BAFOs) were submitted by March 3, 1988. After reviewing the revised technical proposals, the evaluation panel concluded that those ORI and Syscon were highly acceptable in each of the five technical evaluation categories. Even though the best and final technical proposals of both Syscon and ORI were rated as highly acceptable overall, the evaluators concluded that "Syscon is the superior company based on the technical evaluation." This conclusion was supported by detailed evaluation documents that showed that Syscon had improved its technical proposal significantly between its initial and BAFOs, to the extent that Syscon's technical proposal was ultimately ranked first (or tied for first) in four of the five technical evaluation areas, while ORI's technical proposal was ranked first (or tied for first) in only two evaluation areas.

Proposals were adjusted for cost realism, resulting in an evaluated cost plus fee of \$12,043,531 for ORI and \$12,230,046 for Syscon. The source selection authority determined that Syscon's technical superiority was worth more than the \$186,515 in additional costs it represented and, therefore, the contract was awarded to Syscon on April 19. ORI filed its protest on April 28.

ORI first complains that the contracting officer improperly downgraded ORI's initial overall rating from superior to highly acceptable. ORI argues that the contracting officer or the evaluators should have restored the superior rating when ORI clarified A.D. Little's role in its best and final proposal.

The record shows that ORI's initial proposal received a superior overall rating primarily because A.D. Little was proposed as part of ORI's contract team. However, this rating was conditioned upon ORI's somehow formalizing and clarifying its agreement with A.D. Little. The evaluators were concerned because no clarification was provided as to A.D. Little's commitment to the ORI team, no breakdown was provided by labor category or otherwise to show the extent of A.D. Little personnel's participation, and A.D. Little personnel were to be provided only on an "as required" basis. For these reasons, the contracting officer concluded that ORI's superior rating was too speculative. After discussing the matter with the chairman of the technical evaluation panel, he lowered ORI's overall rating accordingly. Moreover, when ORI provided clarification of A.D. Little's participation as a subcontractor, ORI proposed to use the key A.D. Little personnel for only 150 hours over the 3 years of the contract. This is less than 1 percent of the total effort. As ORI's initial superior rating was

expressly conditioned on use of A.D. Little as a formal member of ORI's proposal team, and as the final proposal offered use of A.D. Little personnel for only a minimal amount of time, we find no fault in the evaluators' not restoring ORI's superior ranking. Thus, we believe that the contracting officer and the evaluators had a reasonable basis for their ratings of ORI's proposal in that regard.

ORI next contends that Syscon was selected for award because Syscon proposed ready access to certain laboratory facilities including acoustic measurement facilities, signal processing facilities, hardware test equipment and data reduction facilities. ORI says it did not offer such facilities because the RFP did not require them, and argues that the Navy should have identified its requirement for such facilities in the RFP as an evaluation factor if it was going to evaluate them as it did with Syscon. ORI also charges that the Navy improperly did not point out this deficiency in ORI's initial proposal to ORI during discussions.

The Navy responds that Syscon's enhanced laboratory facilities and acoustic expertise included specialized analytic software with direct application to the contract requirements that would cost the Navy approximately \$375,000 to duplicate. The Navy further points out that Syscon's evaluated cost plus fee was only \$186,515 more than ORI's, which represents only about 1.5 percent of the total contract cost, so that Syscon's proposal clearly represented the greater value to the government.

The noted laboratory facilities were not set forth in the RFP as a minimum requirement that a proposal had to meet in order to qualify for contract award. The evaluation documents show that the Navy had very high regard for ORI's initial technical proposal and considered ORI fully capable of performing the required work using only the facilities ORI had proposed. Thus, the Navy properly did not consider ORI's proposal deficient for failing to offer the above-listed laboratory facilities, and the Navy was not required to cite this matter as a deficiency in ORI's initial proposal during discussions. See Federal Acquisition Regulation § 15.610(c)(2) (FAC 84-16).

On the other hand, we believe that the RFP did put ORI sufficiently on notice that these types of laboratory facilities could be considered as enhancements to its technical proposal and might result in a more favorable evaluation. The RFP stated that, in describing their technical approach to the statement of work, offerors should identify "any unique capabilities which will be used to

enhance the overall approach to the required tasks." The RFP also stated that 80 percent of the engineering tasks to be performed would involve mid-level engineering capability, while 20 percent of the engineering tasks would involve high-level technology in disciplines such as acoustic propagation and signal processing, among others. In addition, the RFP directed offerors to identify equipment, facilities and procedures to be used for computer facilities, as well as fabrication of prototype hardware. The RFP also specified that offerors should demonstrate their understanding of the statement of work by discussing software programs, systems analysis, fiberoptic systems, and radiated noise analysis, among other things. We believe that the above-enumerated facilities clearly related to the RFP requirements and that the RFP reasonably put offerors on notice that such facilities properly could be viewed as increasing the technical merit of a proposal. See Human Resources Research Organization, B-203302, July 8, 1982, 82-2 CPD ¶ 31.

As to the Navy's actual evaluation of Syscon's proposal in this regard, Syscon's final proposal included the use of a subcontractor that added experience and access to certain laboratory facilities and analytic tools to solve the many acoustic related problems, as well as a source of analytic models and software programs to facilitate the work. The evaluators were impressed by Syscon's subcontractor's facilities and expertise and properly evaluated the subcontractor as a strength in RFP-specified evaluation subfactors--such as understanding the statement of work, software programs, and radiated noise analysis--under the technical approach evaluation factor. The addition of these facilities also helped to upgrade Syscon's proposal under the facilities evaluation factor. As these facilities and tools reasonably related to the work required under the RFP, we do not think the Navy evaluators acted improperly in considering them as enhancements to Syscon's proposal.

ORI alleges that the evaluators improperly downgraded ORI's best and final proposal in the management approach evaluation factor. The evaluators were concerned because the key personnel proposed by ORI were dispersed in 17 different geographic locations throughout the country. The evaluators were also concerned because ORI proposed an individual for the position of project manager who would contemporaneously act as a division manager for one of ORI's divisions. ORI claims that its personnel were dispersed over only eight different locations, which represents a dispersal over only one location more than Syscon's personnel team. Furthermore, ORI charges, the Navy had no basis for discounting the program manager's effort as he was fully committed to the

project full-time and because his administrative assistants would perform most of the corporate/management functions required of him as a division manager.

We find no impropriety in the Navy's evaluation of ORI's proposal. The record shows that the Navy specifically told ORI during discussions that it was concerned about ORI's efficiency and effectiveness in managing and coordinating the project team because ORI had proposed team personnel from 10 separate locations. Instead of acting to allay the Navy's concerns about dispersal of its key personnel, ORI actually increased the dispersal of its key personnel to 17 locations. In this regard, ORI arrives at its calculation of only eight geographic locations by considering different offices that are near each other to be the same location even if they are in different towns. We think the Navy evaluators were reasonable in treating each office as a separate location, however, because offices were independently managed, each office was some distance from other offices, and many of the offices ORI considers to be near each other actually are offices of different companies acting as subcontractors on the ORI team. We think the Navy reasonably found that a proposal team made up of six separate companies in 17 different offices might be more difficult to manage effectively.

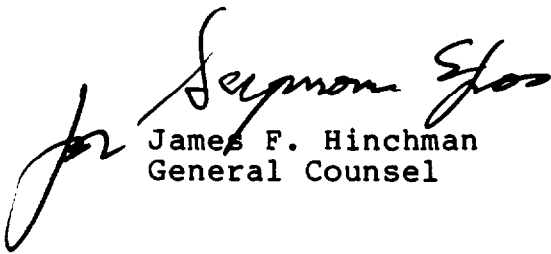
Moreover, we can understand the evaluators' concern that a project manager who also had duties to perform as a division manager might be less effective by virtue of his dual roles. It was incumbent upon ORI to explain in its BAFO how this person could handle both jobs well, which ORI failed to do. We note also that the evaluators did upgrade ORI's evaluation in the personnel factor for the outstanding quality of the personnel team and project manager it proposed. In our view, the evaluation was reasonable in this regard.

In sum, we find no legal basis to object to the Navy's evaluation of proposals. The record shows a very detailed evaluation in each of the five technical categories set forth in the RFP. The record further shows that the evaluations were weighted to give each factor the appropriate degree of importance accorded it in the RFP. Close examination of the evaluation materials reveals that the evaluators were able to discern varying degrees of technical excellence within the broad, highly acceptable rating. Of the five factors in which technical proposals were evaluated, Syscon's proposal was decidedly better than ORI's in three, while ORI's proposal was superior to Syscon's in only one. While the Navy regarded ORI's proposal as a fully qualified or very good proposal, the Navy reasonably found that Syscon's proposal was even better.

We have recognized that in a negotiated procurement selection officials have the discretion to make cost/technical tradeoffs, and the extent of such tradeoffs is governed only by the tests of rationality and consistency with the established evaluation criteria. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. We have upheld awards to higher technically rated offerors with higher proposed costs where the contracting agency reasonably determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. See, for example, Tracor Marine, Inc., B-226995, July 27, 1987, 87-2 CPD ¶ 92.

Based on our analysis of the Navy's evaluation of proposals as discussed above, we think the agency properly exercised its discretion when it determined that the superiority of Syscon's offer was worth more than the slight cost advantage of ORI's offer. The Navy's determination is especially justified because the RFP emphasized the importance of technical merit over cost considerations. See Todd Logistics, Inc., B-203808, Aug. 19, 1982, 82-2 CPD ¶ 157. Furthermore, the Navy calculated the value of certain of Syscon's analytic software with direct application to the contract requirements to be worth approximately \$375,000 to the government; even though this amount was not considered in the cost evaluation, we note it is about double the amount of the cost advantage of ORI's proposal. Accordingly, the Navy's decision to award to the offeror with the higher-rated technical proposal at a slightly higher evaluated cost was reasonable and consistent with the evaluation formula.

The protest is denied.

  
James F. Hinchman  
General Counsel